BAR BULLETIN

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Professional Ethics

Probate Practice

Library News

Activities of Junior Barristers

Sidelights on Sacramento

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TO THE EDITOR OF THE BULLETIN:

I note in your last issue the results of a survey in New Jersey of incomes earned by members of the bar. Also that more than half the lawyers within the scope of the inquiry were admitted to practice within the last ten years.

Reduced to tabular form the record discloses:

Admitted within five years:	
1928, minimum average earnings	$2,875.00
1937, minimum average earnings	950.00
Admitted within ten years:	
1922, minimum net average earnings	4,175.00
1928, minimum net average earnings	5,350.00
1938, minimum net average earnings	2,425.00
1928, maximum net average earnings	8,750.00
1938, maximum net average earnings	3,825.00

The showing for attorneys of older standing is better, but the per cent. of decline is still startling.

So the BULLETIN asks "What is the answer?"

My reply is that general conditions played an important part in the slump, and for the rest it is due to agencies, commissions, arbitration and bereaux.

It is with these latter that we lawyers are chiefly concerned. In the general direction of commercial trends we "run with the pack," but for the other causes of loss of income we are ourselves to blame.

And it is in these latter causes that future danger lies, for they are due to our own foolish shortsightedness. If we persist in our obtuseness, conservatism and stupidity, they will continue and increase their depressing influence.

While all the time the remedy lies in our own hands. We have alienated confidence, arrogantly continued our acknowledged errors and defied public opinion. The public has retaliated.

We may not be able at best to restore maximum incomes, but we can stop their progress down the chute. We can outdo the agencies and commissions if we will modernize our tools. These rivals of ours are up to date while we are still in the fog of the dark ages, plowing with a crooked stick.

FRED N. TAFT.

PROFESSIONAL ETHICS IN EVERYDAY PRACTICE

By Philbrick McCoy, of the Los Angeles Bar*

THE Canons of Professional Ethics were first adopted by the American Bar Association in 1908 as a general guide to the lawyer in the varying phases of litigation and in all the relations of professional life. They have been adopted without change by the Los Angeles Bar Association, and, by the first Rule of Professional Conduct, they are commended to the members of the State Bar of California.[1] In some jurisdictions the Canons are binding on lawyers by virtue of statute or rule of court[2], while in other jurisdictions, as in California, members of the bar are governed by rules of professional conduct based upon the Canons and having the force of law.[3] In all jurisdictions the Canons are commonly recognized by bench and bar alike as establishing wholesome standards of professional action, and even where they are not a binding obligation and are not enforced as such by the courts, lawyers may be disciplined for not observing them.[4]

It was said when the Canons were adopted: "Such a code is valuable as the expression of public opinion, and its value, therefore, will depend upon the degree of social courage with which the standard it furnishes is enforced by the bar in different communities."[5] The writer might have said that their value would also depend upon the degree of social courage with which the standard is enforced by the courts.[6] Fortunately, to the great credit of all concerned, it can be said that in most instances the value of the Canons has been demonstrated by both the courts and the bar associations.

In the very nature of things the lawyer in general practice is called upon to answer many questions of legal ethics and professional conduct. There are some lawyers, of course, who don't take the trouble to find the answers, or who, knowing the answers, think they can beat the game, and in such cases discipline in some form by the courts is reasonably sure to follow.[7] While the decisions of the courts in these cases, are, of course, authoritative, their value as a guide to future conduct depends to some extent upon the soundness of the court's opinions. This body of rulings on professional conduct is augmented by the opinions of the committees established by several bar associations, including the American Bar Association, whose primary purpose is to give effect to the old adage, that: "An ounce of prevention is worth a pound of cure." Although the opinions of these committees have no authoritative character, their value to the active prac-

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(1) For a brief history of codes of ethics in America, see Carter: "The Ethics of the Legal Profession."

(2) See *In re Winthrop*, 135 Wash. 135, 237 Pac. 3 (statutes); *In re Moran* (Wash. 1940), 106 Pac. (2d) 571; Rules of Supreme Court, No. 35, 339 Mo. vii (1936).

(3) Rules of Professional Conduct, 213 Cal. cxiii (as amended); Secs. 6076, 6077 State Bar Act (Bus. & Prof. Code); *Barton v. State Bar*, 209 Cal. 677, 289 Pac. 818.

(4) *In re Cohen*, 261 Mass. 484, 159 N. E. 495, 55 A. L. R. 1309; *Hunter v. Troup*, 315 Ill. 293, 302, 146 N. E. 321.

(5) The Outlook, Vol. 90, p. 142 (Sept. 26, 1908).

(6) See Turrentine: *May the Bar Set Its Own House in Order?*, 34 Mich. Law Rev. 200 (1935); *People ex rel. Karlin v. Culkin*, 248 N. Y. 465, 162 N. E. 487, 60 A. L. R. 851; *In re Clifton*, 33 Idaho 614, 196 Pac. 670, 19 A. L. R. 931; *Disciplinary Proceedings, A Survey of Methods*, published by Amer. Bar Assn. 1935.

(7) But see *Barton v. State Bar*, 209 Cal. 677, 289 Pac. 818; *Barton v. State Bar*, 213 Cal. 186, 2 Pac. (2d) 149, and *Barton v. State Bar*, 2 Cal. (2d) 294, 40 Pac. (2d) 502

titioner is obvious.[8] The opinions of at least two of these committees which are of general interest to the profession are readily available in print.[9]

All lawyers can well afford to reread the Canons from time to time;[10] but even a speaking acquaintance with the Canons and with the decisions of the courts and the opinions of the committees construing them is not always enough to prevent us from committing some unintentional transgressions which may well lead us into difficulties. Attention is here directed to some of the more common unintentional errors of our everyday practice, having in mind our three-fold duties to the courts, our clients and our fellow-lawyers.

The Lawyer and the Courts

The first duty a lawyer owes to the courts is with respect to the actions he files or defends for his clients. It is well to remember that we are not obliged to act as attorney for every person who may wish to become a client, and that we have the unquestioned right to decline employment; furthermore, although the law says that "For every wrong there is a remedy,"[11] it is the lawyer's responsibility to decide whether there is a wrong, and, in deciding, he should not accept the client's conclusion. These matters are governed by Canon 31, which concludes with this statement:

> "The responsibility for advising as to questionable transactions, for bringing questionable suits, for urging questionable defenses, is the lawyer's responsibility. He cannot escape it by urging as an excuse that he is only following his client's instructions."

On the other hand, we should "beware of bold and confident assurances to clients, especially where the employment may depend upon such assurance," and should not guarantee the successful outcome of the litigation we are employed to conduct.[12]

Many lawyers have forgotten that they should not "seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law."[13] This rule, of course, applies not only to oral statements of counsel to the court, but also to all written documents which we prepare and file. The thing that we are apt to overlook is that we are held personally responsible for the contents of all documents and must affirmatively guard against false statements.[14] The point is well illustrated in an early disbarment proceeding in this state, wherein the attorney was charged with filing an affidavit containing a false statement as to the terms of a stipulation. In dismissing the proceeding the court remarked "that it is always somewhat dangerous to swear to the 'legal effect' of a matter

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(8) See Boston, *Practical Activities in Legal Ethics*, 62 U. of Pa. Law Rev. 103 (1913); Cheatham and Lewis, *Committees on Legal Ethics*, 24 Cal. Law. Rev. 28 (1935).

(9) These are the opinions of the Committee on Professional Ethics of the New York County Lawyers' Assn., created in 1912, and of the Committee on Professional Ethics and Grievances of the American Bar Association, created in 1932.

(10) See *Kennedy v. State Bar*, 13 Cal. (2d) 236, 240; 88 Pac. (2d) 920: "Whatever might be the cause of the failings of the petitioner, whether due to . . . ignorance of the rules of conduct, or otherwise such failings may not be condoned. Protection of the public requires that the rules of professional conduct be adhered to."

(11) Civ. Code, Sec. 2523.

(12) Canon 8.

(13) Sec. 6068, State Bar Act (Bus. & Prof. Code); Canon 22; Rule 17, Rules of Professional Conduct.

(14) 9 Cal. Jur. Supp., *Practice of Law*, Secs. 57, 58, pp. 405-407; *Gelberg v. State Bar* 11 Cal. (2d) 141, 78 Pac. (2d) 430; *Bruno v. State Bar*, 213 Cal. 151, 1 Pac. (2d) 989.

in the form of a positive averment. It is certainly less hazardous to give the written language of an instrument or (if the instrument is lost or beyond the affiant's control) to state that the exact language is not remembered, and to give the substance of the language; that is, to use language which conveys the precise idea expressed by the words contained in the instrument."[15] So, too, when it must be conceded by counsel that, "strictly speaking," the facts alleged in the pleading or affidavit are not true, the attorney's belief that they are "substantially true" is no defense to a charge of professional misconduct.[16] It is also well to remember when applying to one judge for relief, to disclose all the facts relating to any previous unsuccessful application to another court or judge for the same relief; failure to do so happens to be a contempt of court.[17]

The Lawyer and His Client

1. NEGLIGENCE

Most of our unintentional transgressions involve our relations to our clients, and the greatest of these are due to negligence and proscrastination. Recently two lawyers were suspended by the Supreme Court because of their negligence, a fault which all of us possess in some degree.[18] As Justice Carter puts it in his dissenting opinion in *In re McKenna:* "Any attorney who has actually devoted himself to the active practice of the law has from time to time been guilty of some act of negligence which was detrimental to his client's interests." But whether mere negligence is sufficient cause for discipline is open to serious doubt, however close the line now seems to be drawn.[18a] In the same dissenting opinion Justice Carter, appears to state the soundest rule when he says that "it is contrary to any concept of legal ethics to inflict discipline upon an attorney for a wholly unintentional act regardless of the ills which might flow therefrom." In other words, a lawyer should not be disciplined for "mere negligence" in the absence of bad faith or dishonesty.[19]

But even though we may not be liable to discipline for our unintentional negligent acts, we are not free from responsibility in such cases. In accepting professional employment we contract to use reasonable knowledge and skill and to exhibit the diligence ordinarily possessed and exhibited by well-informed members of the profession; if we do not, we may be liable in damages to our clients for the losses they sustain.[20] In a word, the lawyer is not answerable for an error of judgment;[20a] "it is his own fault, however, if he undertakes without knowing what he needs only to use diligence to find out, or applies less than the

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(15) *In re Houghton,* 67 Cal. 511, 517, 8 Pac. 52.
(16) *Paine v. State Bar,* 14 Cal. (2d) 150, 93 Pac. (2d) 103.
(17) Sec. 1008, Code Civ. Proc.; and see *Francis v. Superior Court,* 3 Cal. (2d) 19, 43 Pac. (2d) 300.
(18) *Trusty v. State Bar,* 16 Cal. (2d) 550, 107 Pac. (2d) 10; *In re McKenna,* 16 Cal. (2d) 610, 107 Pac. (2d) 258.
(18a) *In re McKenna, supra;* case note, Disbarment: Negligence as a ground for disbarment and suspension, 29 Cal. L. Rev. 427 (March, 1941).
(19) See *Marsh v. State Bar,* 210 Cal. 303, 291 Pac. 583; *Marsh v. State Bar,* 2 Cal. (2d) 75, 39 Pac. (2d) 403; *Waterman v. State Bar,* 8 Cal. (2d) 17, 63 Pac. (2d) 1133. And see Practice of Law, Sec. 62, 9 Cal. Jur. Supp. p. 410.
(20) *Citizens' Loan etc. Assn. v. Friedley,* 123 Ind. 143, 23 N. E. 1075, 7 L. R. A. 669, (Unsettled state of case law; no liability); *McCullough v. Sullivan,* 102 N. J. Law 381, 132 Atl. 102 (Holding that, without express agreement, a lawyer is not an insurer, and is not a guarantor of the soundness of his opinions, the successful outcome of litigation, etc.); 3 Cal. Jur. *Attorneys at Law,* Secs. 73-77, pp. 670-675; *Cf. Feldesman v. McGovern,* 44 Q. C. Q. 608.
(20a) *In re Kling,* 44 Cal. App. 267, 186 Pac. 152.

occasion requires. A lawyer is without excuse who is ignorant of the ordinary settled rules of pleading and practice, and of the statutes and published decisions in his own state."[21]

2. Adverse and Conflicting Interests.

The Canons which declare that: "the lawyer should refrain from any action whereby for his personal benefit or gain he abuses or takes advantage of the confidences reposed in him by his client," and that he should not acquire interests adverse to those of his client,[22] should be distinguished from the Canon which states that: "It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts."[23]

The act of an attorney who by purchase or through undue influence or concealment of material facts acquires an interest adverse to that of a client, as in the subject matter of litigation, is seldom inadvertent or unintentional. Obviously, transactions of this character may be set aside on a showing of a fraud in law on the rights of his client, regardless of the good faith of the attorney.[24]

As a general rule it is dangerous for a lawyer to act in the capacity of "trustee" for a client, particularly for elderly clients and those with little business experience, without insisting that the client have independent legal advice. The lawyer acting in that capacity is quite apt to find himself with interests adverse to his client, even when not led to deal with client's property for his own benefit. His inability to establish that his transactions with respect to the trust property were fair, just, and equitable in all respects, may well result in financial loss,[25] if, in fact, the case does not end in suspension or disbarment.[26]

The lawyer who asks the court to fix his fees for professional services rendered to an executor, administrator, trustee, or guardian has an interest adverse to those of his client and of the parties concerned, and has a duty to inform them of all material facts with respect to his application, so as to put them on guard and give them ample opportunity to protect their interests. If he fails to do so the order fixing his fees may be set aside on a showing that it is "fraudulent in law," even though the evidence falls short of showing an intent on the part of the lawyer to do any "moral wrong,"[27] and even though he may not be subject to discipline.[28]

In the average case it is not difficult to decide whether an interest is adverse to that of a client. The situation which involved conflicting interests is not as easily recognized.

Within the meaning of the canon, "A lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to

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(21) *Citizens' Loan etc. Assn. v. Friedley, supra,* n. 20.

(22) Canons 6, 10 and 11; Rules 4, 5, 6 and 8, Rules of Professional Conduct.

(23) Canon 6, Rule 7, Rules of Professional Conduct.

(24) *People v. Ginsberg,* 87 Colo. 115, 285 Pac. 758; *Neihart v. Buck* (C. C. A. 10th) 50 F. (2d) 367; Thornton on Attorneys at Law, Sec. 164, p. 293.

(25) *Verner v. Mosley,* 221 Colo. 36, 127, So. 527; *Carlson v. Lantz,* 208 Cal. 134, 280 Pac. 531; cf. *Clark v. Millsap,* 197 Cal. 765, 242 Pac. 918.

(26) *Lantz v. State Bar,* 212 Cal. 213, 298 Pac. 497; *Stafford v. State Bar,* 219 Cal. 415, 26 Pac. (2d) 833; *Stanford v. State Bar,* 100, Cal. Dec. 113, 104 Pac. (2d) 635.

(27) *Gwin v. Fountain, supra,* 159 Miss. 619, 126 So. 18; *State ex rel, Clark v. District Court,* 102 Mont. 227, 57 Pac. (2d) 809.

(28) *Furman v. State Bar,* 12 Cal. (2d) 212, 83 Pac. (2d) 12.

another client requires him to oppose."[29] This Canon is based, of course, on the Biblical injunction that "no man can serve two masters."[30]

It does not matter "that the intention and motives of the attorney are honest. The rule is designed not alone to prevent the dishonest practitioner from fraudulent conduct, but as well to preclude the honest practitioner from putting himself in a position where he may be required to choose between conflicting duties, or be led to attempt to reconcile conflicting interests, rather than to enforce to their full extent the rights of the interest which he alone should represent."[31]

It has been held for example, that the attorney for an employer's insurance carrier in proceedings before the Industrial Accident Commission may not represent the claimant in his action for damages caused by the negligence of a third party, and a contract with the claimant for a contingent fee in such a case is void as against public policy.[32]

The cases indicate that the lawyer who represents the executor or administrator of an estate is most likely to err by accepting employment to represent

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(29) Canon 6; Thornton on Attorneys at Law, Sec. 174, p. 307.

(30) *Murray v. Lizotte,* 31 R. I. 509, 77 Atl. 231.

(31) *Anderson v. Eaton,* 211 Cal. 113, 293 Pac. 113; *Wutchumna Water Co. v. Bailey,* 216 Cal. 564, 15 Pac. (2d) 505.

(32) *Anderson v. Eaton, supra,* n. 31; and see *Gillette v. Newhouse Realty Co.,* 75 Utah 13, 282 Pac. 776, and *Klein v. Matthews* (Utah, 1940), 106 Pac. (2d) 773; Opin. 99, 112, Amer. Bar Assn. Comm.

some claimant whose interest conflicts with those of his client. Thus, as a general rule, he should not accept employment to prosecute a claim against the estate, or represent the legatees and devisees in a proceeding for construction of the will, or appear for the heirs or beneficiaries of an estate in any contested action against the personal representative or trustee.[33] The case is otherwise when the lawyer undertakes to represent at the same time parties whose interests conflict, where he acts with the full knowledge and consent of both parties, and there is no concealment or bad faith on his part, particularly where no litigation is involved.[34] On the other hand, when a lawyer has been employed to prepare a contract or other instrument or establish a client's rights, he should not thereafter accept employment which would require him to attempt to nullify his own work.[35]

Whether or not there is a conflict of interests depends upon the particular facts of each case. The test is whether the new employment relates to the subject matter of the former employment, and whether he will or even may be called upon to use or take advantage of the confidential communications of the former client for the benefit of the new one.[36] The decision in each case as to whether there is any inconsistency rests with the lawyer, however difficult it may be to reach the proper conclusion.[37]

3. Lawyers as Witnesses

As a general rule, the lawyer is well aware that, without the consent of his client, he must not testify as to any privileged communication.[38] However, many lawyers are unaware of the limitations on our right to testify for our clients. Canon 19 declares "When a lawyer is a witness for his client, except as to merely formal matters, such as the attestation or custody of an instrument and the like, he should leave the trial of the case to other counsel. Except when essential to the ends of justice, a lawyer should avoid testifying in court in behalf of his client."

The relation of attorney and client does not affect the competency of the testimony, but does affect the credibility of the lawyer as a witness. The courts condemn the practice and hold that it is unprofessional for a lawyer "to accept employment in any matter in which he knows that he will be a material witness for the party seeking to employ him, or having accepted employment, for him to testify for his client except in those rare cases where, from some unforeseen event occurring in the progress of a trial his testimony becomes indispensable to prevent an injustice."[39] For like reasons, a member of a firm should not accept employment when he knows that his partner will be a material witness for the party seeking to employ them.[40]

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(33) Thornton on Attorneys at Law, Sec. 175, p. 309; Opin. 60, 167, Amer. Bar Assn. Comm.

(34) 5 Am. Jur. *Attorneys at Law*, Sec. 65, p. 297; *Grauberger v. Light*, 127 Cal. App. 567, 16 Pac. (2d) 188; *American Box & Drum Co. v. Harron*, 44 Q. C. Q. 397.

(35) Ops. 64, 71, 177, Amer. Bar Assn. Comm.

(36) Thornton on Attorneys at Law, Sec. 176, p. 314; *Galbraith v. State Bar*, 218 Cal. 329, 23 Pac. (2d) 291.

(37) *Lalance etc. Mfg. Co. v. Haberman Mfg. Co.*, 93 Fed. 197; *Logan v. Logan* (Ind. App. 1932), 180 N. E. 32; *Elberta Oil Co. v. Superior Court*, 108 Cal. App. 344, 291 Pac. 668.

(38) Sec. 1181, Code Civ. Proc.; Canon 37.

(39) Opin. 50, Amer. Bar Assn. Comm. on Prof. Ethics and Grievances, and cases cited.

(40) Opin. 33 and 50 Amer. Bar Assn. Comm.

Sometimes after the lawyer is employed, it may become apparent that he will or may be called as a material witness for his client. In that event, he may withdraw from further active participation in the case without criticism.[41]

4. Trust Funds

Comparatively few lawyers are dishonest in dealing with money and property belonging to their clients, but a great many are guilty, unintentionally, of violating the rule that a lawyer should not commingle the money or other property of a client with his own, and should promptly report to the client receipt of all money or other property belonging to the client.[42] Failure to observe this rule frequently results in the loss of the client's money, and not infrequently brings about the suspension or disbarment of the offender. It has been said that "moral turpitude is not necessarily involved in the commingling of a client's money with an attorney's own money if the client's money is not endangered by such procedure and is always available to him. However, inherently there is danger in such practice for frequently unforeseen circumstances arise jeopardizing the safety of the client's funds, and as far as the client is concerned the result is the same whether his money is deliberately misappropriated by an attorney or is unintentionally lost by circumstances beyond the control of the attorney."[43]

To protect himself and his client the lawyer should deposit the funds of his clients in a trust account, and keep full and complete books of account with respect thereto; he invites trouble when he deposits such money in his personal account,[44] or keeps it in his office,[45] particularly when he fails to report his collections promptly to his client.[46] But this does not mean that a separate trust account must be maintained for each client. Common sense and respectable authority hold that: "An attorney is not subject to censure for commingling money belonging to different clients. As a practical matter, he cannot open a separate account for funds received from each client"; it is the commingling by an attorney of other people's money with his own, or using it for private purposes, that is condemned as a dangerous[47] practice. The controlling consideration is whether the deposit is made without anything to designate its trust character. The good faith of the lawyer is not involved; having, from any motive, deposited his client's money in his own name, thereby vesting himself with a legal title, he will not be permitted to say, in the event of a loss, that the fact is not what he voluntarily made it to appear.[48]

As a general rule questions relating to attorney's fees do not involve questions of professional ethics. It is well to keep in mind, however, that in this jurisdiction a lawyer does not have a lien for his fees except as such liens may be created by contract between the lawyer and his client.[49] Consequently, in the

(41) *Allen v. Ross,* 199 Wis. 162, 225 N. W. 831, 64 A. L. R. 180.
(42) Canon 11; Rule 9, Rules of Prof. Conduct.
(43) *Peck v. State Bar,* 217 Cal. 47, 17 Pac. (2d) 112.
(44) *Peck v. State Bar, supra,* n. 43; *Smuckler v. State Bar,* 2 Cal. (2d) 80, 38 Pac. (2d) 777; *Wilcox v. State Bar,* 2 Cal. (2d) 614, 42 Pac. (2d) 631.
(45) *Schaeffer v. State Bar,* 212 Cal. 367, 298 Pac. 994; *Irons v. State Bar,* 11 Cal. (2d) 14, 77 Pac. (2d) 221.
(46) *Petersen v. State Bar,* 16 Cal. (2d) 57, 104 Pac. (2d) 769.
(47) *Gordon v. Harrison* (Pa. 1932), 161 Atl. 608; *Pidgeon v. Williams,* 21 Grat. (Va.) 251.
(48) Thornton on Attorneys at Law, Sec. 327, p. 572, citing *Nolter v. Dolan,* 108 Ind. 500, 8 N. E. 289.
(49) *McGown v. Dalzell,* 72 Cal. App. 196, 236 Pac. 929; *Tracy v. Ringole,* 87 Cal. App. 549, 262 Pac. 73; *Echlin v. Superior Court,* 13 Cal. (2d) 368, 90 Pac. (2d) 63, 124 A. L. R. 719.

absence of agreement, he may not deduct and retain the amount of his fees from moneys collected for his client, although it would appear that he has a lien on such money for costs advanced by him.[50] And when a lawyer misappropriates money furnished to him by a client for a specific purpose but not used for that purpose, it is no defense in a disciplinary proceeding that he retained the money to satisfy some alleged claim against the client for services rendered; in such a case he has his remedy at law.[51]

The Lawyer and His Professional Colleagues

Several canons relate to the duties of lawyers to other members of the bar.[52]

Some lawyers have gotten into difficulty by forgetting that a lawyer should not communicate with a party represented by counsel upon a subject of controversy, in the absence and without the consent of such counsel.[53]

In this connection the Canon is specific, that a lawyer should not undertake to negotiate or compromise the matter with the adverse party, but should deal only through his counsel. However, the lawyer for one party may properly interview the employees of the adverse party concerning the facts of the case, before or after an action is pending, even though the adverse party is represented by counsel.[54]

Not infrequently lawyers are called upon to divide their fees with other lawyers. Canon 34 provides that: "No division of fees for legal services is proper, except with another lawyer, based upon a division of service or responsibility." Many lawyers to whom business is referred by lawyers in other parts of the country or elsewhere are unaware of the basis for a division of fees as stated in the Canon. With reference to this matter the American Bar Association Committee said some years ago: "It hardly seems necessary to state that it is improper for an attorney to receive compensation for merely recommending another attorney to his client. Such a practice, if permitted, would tend to germinate the evils of commercialism and likewise tend to destroy the proper appreciation of professional responsibility."[55] This same view appears to be held by the Supreme Court of the United States, which has observed that such a practice would be a direct motive to charge excessive fees.[56]

Where a division of fees with another attorney is proper, it is certainly the safe course to have a definite agreement at the outset and to live up to that agreement.[57] The lawyer who, with dishonest motives, denies his obligations to his associates in such a case is subject to discipline.[58]

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(50) *Ex parte Kyle,* 1 Cal. 331.

(51) *Nolan v. State Bar,* 219 Cal. 759, 28 Pac. (2d) 1050.

(52) Canons 7, 9, 17, 22, 25, 33, 34, 41 and 46.

(53) Rule 9, Rules of Professional Conduct; Canon 9; *Carpenter v. State Bar,* 210 Cal. 520, 292 Pac. 450; Op. 75, 124, American Bar Assn. Comm. Cf. Canon 39, as to interviewing witnesses for opposing side without consent of the opposing party or counsel.

(54) Opin. 117, Amer. Bar Assn. Comm.

(55) Opin. 97, Amer. Bar Assn. Comm., and see Opin. 18 and 153.

(56) See *Weil v. Neary,* 278 U. S. 160, 73 L. Ed. 243.

(57) Opin. 63, Amer. Bar Assn. Comm.

(58) *In re Beveridge* (Okla. 1940), 106 Pac. (2d) 1104.

Conclusion

In the brief space available here it has been impossible to illustrate by example all the situations referred to wherein we may be guilty of unintentional transgressions of the Canons which govern our professional conduct. In all instances our duties and obligations as well as our privileges are stated in clear and unambiguous language, and our difficulties are due generally to the fact that we have never read the Canons, much less the Rules of Professional Conduct. A speaking acquaintance with the Canons and the Rules on the part of more of us would avoid many transgressions, however unintentional. It is for this reason, particularly, that all lawyers can well afford to read the Canons and then reread them from time to time.

One word in conclusion, since some of our members hold judicial office. The Canons of Professional Ethics define our duties to the courts, the public, and the legal profession. The standards they provide must be maintained so that "the public shall have absolute confidence in the integrity and impartiality" of the administration of justice. Public opinion, if nothing else, compels us as lawyers to respect the courts, and protect them from unjust criticism and clamor. But the courts have certain obligations of equal importance. In 1924 the American Bar Association adopted the Canons of Judicial Ethics, "the spirit of which it suggests as a proper guide and reminder for judges, and as indicating what the people have a right to expect from them." These Canons have also been adopted by the Los Angeles Bar Association. Several more or less recent local events seem to indicate that some lawyers who have become judges could well afford to read these Canons once in a while, and remember that they, like us who practice before them, only exist to serve the public interest.

HELP! IF IN NEED CALL ASSOCIATION OFFICE

Applications for employment as associate lawyers, law clerks, secretaries and stenographers are always on file at the office of the Association. Members are urged to make use of this service. They may do so by examining the applications on file or by advising the office of their needs. Telephone TUcker 8118.

SUGGESTIONS FOR PROBATE PRACTICE

By Honorable J. W. Mullin, Jr., Probate Commissioner of Los Angeles County*

PROBATE law is not always a mass of technical data and jurisdictional notices. It includes some definite and interesting theories, oftentimes comparable to the reasoning which may be applied to constitutional law and corporations. Constantly new situations arise in the Probate Department. One of the principle sources of these problems is olographic wills with insufficient, ambiguous or conflicting provisions. For example: Some dear old lady's olographic will disposes minutely of her handpainted saucers and bedspreads, but leaves the matter of life estates and trust estates in real or personal property hanging in mid air. Of course, a Court may not rewrite such a will, but the result of these omissions must be taken care of upon distribution. Probate fills more pages of the books than most branches of the law and involves, therefore, numerous ramifications. Thus to treat with such a broad field in comparatively a few minutes is utterly impossible, and a person preparing this type of article confronts a situation similar to the difference between a hoop-skirt and a bathing suit, the former of which covers the subject but does not touch it, and the latter which touches the subject here and there but certainly cannot cover it adequately.

The Probate Court of Los Angeles County enjoys an unique practice among the counties of California in that it operates under the so-called "Commissioner-Affidavit" system. Under such method the Commissioners check the calendars several days ahead and mark them tentatively for passing without appearance. I know of no better way of explaining this system than to touch briefly on its background. In 1929 the Probate Judges Crail and Stephens (incidentally the brother of the present Judge) sought to find some method by which so many personal representatives and their lawyers would not be obliged to come into court for the purpose of giving purely routine testimony, such as, jurisdictional facts, etc. After some research they found the solution in section 2009 of the Code of Civil Procedure.

This is an evidence section and reads, so far as we are presently concerned, as follows:

> "An affidavit may be used . . . as evidence in an uncontested probate proceeding, including a proceeding relating to the administration of the estate of a decedent, also a proceeding relating to the administration of the estate of a minor or incompetent person *after a guardian has been appointed therein.* . . ."

Therefore, an affidavit has the capacity to substitute for an appearance, except in the following instances: The section provides that *after* letters of guardianship are issued, etc., an affidavit is good evidence in such subsequent proceedings.

***The author graduated with the degree of LL.B. from Loyola University in 1929. He was admitted to practice in California in 1930. During the years attending law school he served as a bailiff in the Probate Department. Thereafter he practiced law in Beverly Hills for approximately two years. Appointed a Court Commissioner of Los Angeles County assigned to Probate in 1933, he has served in such capacity continuously. During this time he has written various articles in relation to probate practice and procedure for legal publications in California. This article is the substance of a talk given at the luncheon meeting of the Los Angeles Bar Association, June 24, 1941.—Ed.**

This infers that the testimony of the guardian should be given at the time of appointment, and it is reasonable to assume that the Court should have an opportunity to view the appearance and qualifications of the guardians to see that they would be suitable for their proposed trust.

A petition for probate of will and for letters testamentary is not required by statute to be verified, although it may be verified and thus establish sufficient facts for the Court to grant the petition, assuming, however, that if the bond is not waived that the personal property, together with annual income from all sources, is carefully alleged so that the sum of the bond may be intelligently fixed. Proving the will, however, necessitates the subscribing witness to examine it and, therefore, obliges bringing such witness into court. Proof of a will may be made by deposition, of course, where the witness thereto resides out of the county. Have the will photostated after filing with the clerk, so it will bear the correct probate number.

Personal appearance is also necessary on all returns of sale of real and of personal property of more than $100. This for the reason that frequently, if raised bids are received, the attorney must aid the Court and the various bidders in making out new written bids in open court.

Perhaps the best example of a matter becoming a "probate proceeding" is illustrated by the fact that the legislature lifted the old sections for termination of joint tenancy out of the Code of Civil Procedure and caused them to be reenacted under sections 1170, *et seq.*, of the Probate Code. Therefore, appearance is not necessary under such petitions presently filed *if the inheritance tax*

clearance is in the file. Another instance requiring personal appearance is in settlement of minor's disputed claims for damages. Public policy and experience have demonstrated that it is quite necessary to view the minor and ascertain that he or she has fully recovered.

Therefore, if in order, and if no objection is made, all other such proceedings may be granted without appearance. These include petitions for letters of administration, current and final accounts; ratable, partial and final distributions; leases, compromises, exchanges and petitions for instructions. Now, all of the foregoing presupposes that the jurisdictional notices have been given, such as: Special notices, beneficiaries' notices, notice to the Veterans Bureau, notices to the Attorney General's office and the Department of Institutions. Our system includes the service of obtaining such information two or three days in advance, so, if possible, find out from the legal newspapers what position and on what day and in which department your matter is set, and call the Commissioners' office. Obviously, everything cannot be handled over the telephone, so sometimes it is necessary to have the attorney and the personal representative come in to explain certain items on an account or some phase of distribution. After being continued twice without any appearance, such matters are dropped from the calendar and must be reset. Continuances entail a great deal of work by several county employees and we, therefore, strive to have the matter continued far enough in advance to supply the defect. Should some notice have been omitted, it is possible to secure a *waiver* of notice—not merely an acknowledgment of receipt of notice or of the petition.

Some particular situations are a source of constant difficulty with members of the Bar and, therefore, at the risk of boring you by repetition, I shall point out a few of them.

In final reports and petitions for distribution where a detailed accounting is waived in writing by the heirs (all of the claims, debts, etc., having been paid), it is nevertheless necessary to set out in full the balance on hand for distribution because during administration some assets may have been lost through foreclosure, distributed prior thereto, sold or exchanged.

Very commonly this question comes in by telephone: Just what type of notice will be required by the Court on a petition for appointment of guardian of a minor? If guardianship of the person is sought, the matter is set down for hearing and an investigation is instituted by the Juvenile Department to ascertain if proper home conditions, etc., are being furnished the ward. The Court also in some instances signs an order prescribing notice on relatives who may have some prior or equal right to letters of guardianship.

However, it is handy to know that if guardianship of the estate only will be petitioned for, and the minor is living with the parents, this may be accomplished without notice if the parent not petitioning signs a consent and waiver of notice. Minors over 14 must nominate their guardian in writing.

In a guardianship the attorney may not petition direct for his fee. The guardian himself is the proper petitioner.

Although not required by statute, it has proven a very salutary rule not to allow fees or partial or ratable distribution until an accounting has been filed.

Otherwise, assets may be lost by foreclosure (and thus statutory fees be reduced) or distributions may be made without claims having been filed.

In testamentary trust accountings and petitions for instructions it is quite important to list in the body of these pleadings just who the beneficiaries are, both present and contingent, so that the notices may be mailed by the trustee or his attorney to such beneficiaries, who will be thus bound by the order or judgments.

Place in the caption and prayer in accountings all items on which particular orders will be requested for compromise, exchange, fees, etc. Many of these matters are granted on a 10 days' notice posted by the clerk as a routine matter, and as the clerk usually posts from the caption, the Court will then have jurisdiction of all such proceedings.

A petition to reduce a bond under the latest amendment (553.3 Probate Code) now must accompany and be a part of a current accounting, at least in estates of deceased persons.

A petition for family allowance before inventory is filed may be granted *ex parte*, but the duration of this order is restricted until the inventory is filed but not to exceed a certain number of months. This has the effect of expediting filing the inventory and obliges a petition to be set for hearing on 10 days' notice to extend such family allowance beyond the date of the first order.

In estates where a going business is to be conducted, it is well to remember and advise your clients, that credit extended such going business is no longer a preferred charge and, therefore, these sums are payable after all other claims. See Estate of Allen, 42 Cal. App. (2d) 398. All items of expenditures for sums due before death, which are properly the subject of claims, should be represented by verified claims filed. This includes last illness and funeral. Otherwise, should the estate prove insolvent, they cannot be allowed, even if paid in good faith, etc. See 929, Probate Code.

Should the will of the decedent be lacking in certain incidental trustee's powers, it is well to have these added, if possible, at the time of distribution. A probate decree becomes final within six months, and frequently it is necessary to have these powers amplified by a plenary suit in equity.*

*See *Adams v. Cook*, 15 Cal. (2d) 352, 101 Pac. (2d) 484. Compare, *Estate of Keet*, 15 Cal. (2d) 328, 100 Pac. (2d) 1045.—Ed.

A BUSINESS DAY

(As outlined by the legal secretary over the telephone)

A. M.

"He hasn't come in yet."
"I expect him in any minute."
"He just sent word in he'd be a little late."
"He's been in, but he went out again."
"He's gone to lunch."

P. M.

"I expect him back any moment."
"He hasn't come back yet. Can I take a message."
"He's somewhere in the building. His hat is here,"
"Yes, he was in, but he went out again."
"I don't know whether he'll be back or not."
"No, he's gone for the day."

—*Submitted by a legal secretary.*

WHAT'S NEW AT THE LAW LIBRARY!

By Thomas S. Dabagh, Librarian

ACCESSIONS.—The Order Department reports that during the fiscal year just ended, 2,600 orders were placed. A total of 7,841 books were added, bringing the collection at the main library to 120,839 volumes, with over 26,000 in the branches.

NEW BOOKS

BIOGRAPHY. The outstanding biographical work for this year, perhaps, is the Holmes-Pollock Letters, in two volumes, consisting of letters which the editor felt were significantly expressive of the life, character, or thought of the two men.

Knox's A Judge Comes of Age is an account of the author's experiences in the office of the U. S. Attorney for the Southern District of New York, as well as the story of his life as U. S. Judge in that district.

BLACKSTONE. Gavit's edition of Blackstone's Commentaries is in reality a republication of the Browne condensation, with added notes on developments in this country, to bring the reader up to date.

BUSINESS. Rohlfing's Business and Government, fourth edition, is intended to indicate the points of contact between business and government. It covers constitutional aspects, various forms of regulation, taxation, labor relations, and even housing.

EMPLOYMENT AGREEMENTS. Employment and Agency Agreements, by Gordon, is a book of forms with supporting citations to cases. Resale price maintenance forms are included, as well as forms for independent contractors, employees and agents.

EVIDENCE. A new edition of Judge Fricke's Criminal Investigation, devoted to information on the securing of evidence and its proper presentation in court, includes a chapter on Handwriting and Questioned Documents, by Sellers.

Camera, Take The Stand, by Herzog and Ezickson, "tells the story of the little magic black box and the part it plays in fighting the criminal."

HISTORY. The Changing American Legal System, by Aumann, is a series of essays dealing with our legal history from Colonial times to the recent swing to administrative tribunals.

Jackson's The Struggle for Judicial Supremacy is an attempt to consider the deeper issues of the President's court reorganization proposal.

INSURANCE. A section-by-section review of the effect of the recent revision of New York insurance law is offered by Kaplan and Gross in their Commentaries on the Revised Insurance Law of New York.

LABOR. The Wagner Act, by Bufford, discusses constitutional aspects, the interpretation of the act, the powers and procedure of the Labor Board, and court jurisdiction and remedies.

MEDICAL JURISPRUDENCE. Anatomy and Allied Sciences for Lawyers, by English, describes human injuries and diseases likely to be of interest in connection with personal injury cases. A large part of the work is devoted to a comparison of verdicts in damage cases.

PROBATE. A paraphrase of the California Probate Code, with comments and forms, based on the author's experience of many years in the Probate Department of one of the large title insurance companies, is presented by Hall's California Probate Law and Procedure.

PUBLIC UTILITIES. Depreciation of Public Utility Property, by Scharff and others, consists of papers on various problems in the field. The authors express the hope that the reading of these papers may suggest to young men in the legal profession lines along which studies might be made toward some adequate solutions of the problems involved.

Hall's Concept of a Business Affected With a Public Interest, discusses the basic question of what is public business, and includes chapters on kinds of business and factors involved in determining their public nature.

REAL PROPERTY. An elementary explanation of the fundamentals of land titles and of forms and procedure in real estate transactions is presented by North and Van Buren's Real Estate Titles and Conveyancing.

SCHOOL LAW. A convenient review of the law relating to Liability for School Accidents, with citations to authority, has been written by Rosenfield.

SHERIFFS. Anderson's Sheriffs, Coroners, and Constables is an encyclopedic review of the powers and duties of these officers, including a full discussion on the levy of execution.

SPECIAL PROCEEDINGS. Vercoe's Special Legal Proceedings gives practical suggestions on habeas corpus, writs coram nobis, insanity cases, and probate proceedings. There are also chapters on the limits of cross-examination, the impeachment of witnesses, pardons, and extraditions.

TAXATION. A study of the effect and application of the Federal Social Security Tax Act is offered by Hughes.

TORTS. Green's Cases on Injuries to Relations is a selection of decisions on the protection available to persons who enjoy the basic relations of society, such as the various personal, professional and trade relations.

TRUSTS. Stephenson's Trust Business in Common Law Countries has as a thesis that "there is a common law system of trust business". This thesis is developed country by country, and makes the book useful for its comparative material.

WAR LAW. Emergency Police Law, by Moriarty, is a handy compilation of the laws and regulations of general application resulting from prevailing emergency conditions in England on account of the war.

ACTIVITIES OF THE JUNIOR BARRISTERS

By Glenn B. Martineau, of the Los Angeles Bar

The Junior Barristers have offered their services and energies in rendering any possible assistance to the Civilian Defense Program. Whitney Harris, Chairman, is pleased to announce that in cooperation with county and municipal authorities a series of radio broadcasts has been prepared and is being presented upon this subject. The purpose of these broadcasts is to acquaint the citizens of Los Angeles with the comprehensive nature of the Civilian Defense Program for Southern California. These broadcasts are heard each Saturday night over Station KFAC at 9:45 P. M. and include addresses by those well qualified to speak because of their part in this work. The first of this series of addresses was made on July 5 by Captain Hossack on behalf of Sheriff Eugene W. Biscailuz on the topic, "General Aspects of the Civilian Defense Program". This was followed on Saturday night, July 12, by a broadcast by Hon. Robert H. Scott, Judge of the Superior Court of Los Angeles County and Director of the Youth Organization Division of the National Defense Program, who spoke on the subject, "Coordination of the Youth Organizations in the Civilian Defense Program". Taking part in this public information work are a number of other leaders in the Civilian Defense Program, including Major General Fickel, Commandant of the Fourth Air Force, March Field, and Karl Holton, Court Trustee of the Superior Court of Los Angeles County, who is in charge of the Welfare Division of the Program. These and others are scheduled to speak.

Closely related is the assistance being given the drive of the United Service Organizations for funds. Whitney Harris, Chairman of the Junior Barristers, has appointed a committee under the Chairmanship of Lee Schwartz and composed of Clinton Rodda, Fred J. Martino, James H. Kindel, Jr., and Walter Q. Loehr to cooperate with the U. S. O. and make aid available to them in their present campaign.

"The Story of American Liberties" prepared and broadcast each Saturday afternoon over Station KFI from 4:30 to 5:00 o'clock by Jerry Ehrlich's Radio Committee continues to express to the public in dramatic fashion some of the practical aspects of our fundamental liberties. The programs currently deal with such subjects as Right of Suffrage, Right of Patent, Right to Habeas Corpus and Right of Racial Equality. The leadership taken by the Junior Barristers of the Los Angeles Bar Association in this matter has been followed by the Public Relations Committee of the State Bar of California which announces that it will prepare a similar program for use by the local bar associations throughout the State. In some instances the transcriptions which have been prepared of "The Story of American Liberties" will be used.

Chapman Collins, Chairman of the Law Lectures Committee, is pleased to announce that the series of summer breakfast lectures will be continued on July 23 at the Rosslyn Hotel with an address by Marshall D. Hall, Esq., on the subject of "Practice Before Federal Administrative Agencies Dealing with Taxation". Those who heard Hon. J. H. O'Connor, County Counsel, earlier this month who spoke on the subject, "Practice before Administrative Agencies of

the County of Los Angeles" know the value of these talks to practicing members of the bar. Mr. O'Connor took up in succession and explained the types of practice and rules of procedure before each of the following County boards and commissions: Peace Officers Retirement Board, County Retirement Board, County Board of Education, Civil Service Commission, Planning Commission, County Board of Supervisors and County Board of Equalization.

For the purpose of bringing into closer contact and acquaintance the young business and professional men of the community, the Los Angeles Junior Chamber of Commerce extended an invitation to the Junior Barristers to share ham and eggs at a meeting of the Junior Chamber Breakfast Club on Tuesday morning, July 15. The guest speaker of the morning was Whitney Harris whose topic was "The Young Lawyer's Place in the Community".

The Legal Aid Committee continues throughout the summer to carry on its valuable work of offering assistance to those in need. Robert Morris, in charge of the work of the Committee for the month of July, announces that a sufficient number of members have volunteered their services to fill the calendar and take care of the work for the remainder of the month.

The Executive Council of the Junior Barristers has continued to hold its breakfast meetings from time to time for the purpose of collecting and carefully nurturing any flashes of wisdom which its members may have. At the last meeting on July 10 it was rumored that the Social Activities Committee under the guidance of Felix McGinnis has made plans for an informal dinner dance to be held Thursday evening, July 31, at Somerset House at 7:30 P. M. It will be necessary for reservations to be made ahead of time.

SIDELIGHTS ON SACRAMENTO

Hon. Roger Alton Pfaff*

State Assemblyman and Member of the Los Angeles Bar

IT is not my purpose to bore the reader of this article (if there be such), with a dry account of bills introduced at the recent session of the California State Legislature or raise disputatious contentions respecting the merits of various legislative measures. I intend to recount a few facts and impressions I secured at Sacramento as a first-term Assemblyman.

Let me say first that any person who becomes a member of the legislature does so at great personal financial sacrifice, if he has a profession or business. This is particularly true of the legal profession and especially so if the legislator happens to be practicing alone and is not associated with a firm that can conduct his legal work during his absence.

The salary paid is wholly inadequate. California pays its Assemblymen and Senators $100.00 per month. After deducting campaign expenses, living costs at Sacramento, which are high, and the time spent in legislative work, which might otherwise be profitably employed, one finds that the political ledger, from a financial standpoint, shows a lot of red ink.

I hear someone cynically query at this point, "Well, why run for public office then? There appear to be plenty of candidates at election time willing and eager to sacrifice their present and future to represent the people."

The answer to this question, it seems to me, is threefold.

First, the experience received from participation in legislative proceedings is invaluable. This is especially true in the case of a lawyer. I spent almost five months at Sacramento this year. It was one of the most valuable educational experiences I have ever had. The intangible benefits of that legislative work will be of incalculable assistance in the future practice of the law.

Second, the constant contact and personal acquaintance with public officials and the representatives of business, labor and agriculture, who are directing the life of our state, is stimulating intellectually and affords an unusual opportunity to secure a better and more comprehensive understanding of the life and problems of our state.

Third, a natural predisposition to engage in public affairs. Some people shun the hubbub of politics. Some of us are happiest when we are in the midst of a hot political campaign. It makes no difference whether one is the candidate. We just like politics. I cannot conceive of any one running for public office who hates political life. And it has always been my belief that the so-called drafted candidate (that modest citizen who is forced to run against his will), is as scarce as hen's teeth. If such there be, he certainly would be a difficult candidate to elect.

It might be interesting to note the pathway a bill must follow in being passed or rejected by the legislature or signed or vetoed by the Governor. We will take a bill introduced in the Assembly as the procedure in essence is identical in both houses. This may be kindergarten to many readers and dull to others.

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*The author of this article was elected to the California State Legislature as Assemblyman from Los Angeles County in 1940. He is a member of the law firm of Goodspeed, McGuire, Harris & Pfaff. He attended the University of Oregon and later the University of California law school at Berkeley. According to United Press Correspondent Dunlap, in his column "Politically Speaking," Pfaff made a brilliant record during his first term at Sacramento.—Ed.

However, it formerly was completely foreign to me and I only set it forth here with the thought in mind that it may be of interest to brother lawyers, particularly so, should some one be interested in proposing legislation. The history of a bill, as set forth hereafter, of course, does not purport to outline in detail all of the various procedural steps that are available in securing passage of a bill but simply outlines the ordinary procedure in the introduction and passage of a bill.

First, the legislator has the legislative counsel prepare the bill in written form for introduction. A copy of the bill is then deposited with the Chief Clerk of the Assembly. The bill, in its turn, is numbered and the title read to the Assembly. The Speaker then announces the particular committee to which it is assigned for consideration.

The Chairman of the Committee, to which the bill is referred, then sets the bill down for a definite hearing date upon his own volition or upon the request of the author. Any person or organization opposing the bill may file a request with the Committee Chairman to be notified of the time and place of the hearing on the bill. When there is such opposition or what is known as a "stop" on the bill, it will not be heard in the absence of notification to the opposition and an opportunity for the committee to hear arguments for and against the bill.

The date having been set and all parties duly notified, the bill comes on for hearing before the committee. The author or proponent of the bill presents his reason for a favorable recommendation by the committee to the Assembly. The opposition, if any, presents their reasons to the committee for tabling the bill or as in many instances the opposition offers amendments to the bill, which alters the bill so that it is then unobjectionable. The proponent of the bill is privileged to close the argument. The committee then, upon motion by a member, which is seconded, may (1) vote the bill out on the floor of the Assembly with a recommendation of do pass or (2) table the bill, which is tantamount to killing it, or (3) take the bill under advisement for action at a later date. For any of the three motions above a majority of the total membership of the committee is necessary. If such a majority cannot be secured the bill remains with the committee in status quo.

If the bill is favorably voted out of committee, either in its original or amended form, it is then placed on the Daily File of the Assembly. Pursuant to the provisions of the State Constitution the bill is then read the second and third times on two consecutive days thereafter, its first reading being when it was read on introduction. After it has been read three times it is placed on the third reading file in the Assembly Daily File and awaits its turn to be considered by the members of the Assembly.

When it is reached on the file, the Speaker calls its number on the daily file and the number of the bill and the author can then request that it be "passed on file," which means that he intends to take it up later, or request of the Speaker that the bill be read. If the author requests the bill be read the Speaker instructs the Clerk to read the bill and after its number and title have been read the author then proceeds to explain the bill to the assembled members. If no argument is offered to the bill the vote can then be taken. If argument in opposition to the bill is made any member may speak for or against the bill. After all discussion has been had the Speaker then asks the author if he desires to close. The author may then deliver his closing remarks on the bill and the vote is then taken. A majority of the Assembly or 41 votes is necessary to pass a bill, unless the bill contains an urgency clause calling for the bill to take effect immediately upon signature by the Governor or if the bill carries an appropriation of money, in which case fifty-four votes are necessary to pass the bill.

The bill is passed. The Speaker announces the vote and orders it transmitted to the Senate for consideration. In the Senate the same routine is followed. The bill is read, referred by the President of the Senate to an appropriate committee and the same hearings, etc., are conducted as in the Assembly.

The bill passes both Assembly and Senate and is transmitted to the Governor for his signature or veto. If he signs the bill it becomes a law 90 days after the legislature adjourns *sine die*. If he vetoes the bill the only way the bill can then become a law is by the Assembly and Senate by a two-thirds vote to override his veto.

It may happen, as is frequently the case, that the Assembly or Senate, amends a bill coming from the other house. In such event, the bill must then be sent back to its house of origin for concurrence in the amendments. The author may not like the amendments to his bill and may request that concurrence be voted down, in which event, the bill is sent to a free conference committee composed of three Assemblymen and three Senators who attempt to iron out the difficulties, further amend the bill and bring back to each house a report which if approved passes the bill on directly to the Governor.

A further word might be said with relation to amendments to bills. As previously stated bills may be amended in committee. They may also be amended, with permission of the Assembly, after they have reached the floor of the house. Bills are often amended numerous times and in many instances, the final amended bill bears small resemblance to the original bill as introduced.

This endless amending of bills sometimes creates embarrassing situations for some member who has innocently placed his name as a co-author on a bill with which he is in full accord. The bill as finally amended may be something entirely different than what the co-author signed and he can never satisfactorily explain how he favored such a bill. And I can speak on this subject from personal experience. During the first part of the session I was asked by the author of a bill to be one of its co-authors. I read the bill, which met with my complete approval and thereupon blissfully signed my name thereon as a co-author and promptly forgot the matter. Although the bill was never considered by the Assembly, imagine my surprise and consternation, upon my return home, when one of my constituents presented me with a copy of the bill, which had been amended many times after its introduction. The final amended bill carrying my name as co-author had changed from an innocent firecracker to a container of TNT. If the transformed bill had been presented to the Assembly, I would have had to oppose its passage and give it a negative vote. Yet still the record clearly showed I was its co-author and presumably for the bill. The answer is not to be a co-author of a bill unless you have control and custody of its life and travels.

There is no limitation on the number of bills a legislator may introduce during the first part of the regular session prior to the constitutional recess. This system has its shortcomings. It results in a flood of bills being introduced with little thought for their content and effect if enacted into law. Hastily prepared, they too often require repeated amendments before acceptable for ultimate passage. The administrative and clerical costs are greatly increased by this system, not to mention the additional time consumed in hearing and considering so many bills. However, a bill introduced at this session to limit the number of bills each legislator could introduce to fifteen was defeated. Some restriction on the unlimited introduction would, it seems to me, have a salutary effect, both from the standpoint of improving the quality and form of legislation and to effect

substantial reduction in the costs of legislature proceedings. If a legislator knew he only had fifteen bills or some restricted number, he would introduce only the important and necessary measures and give more thought and attention to his bills. As a safeguard against the possibility that necessary legislation might be deferred or defeated by such restrictive procedure, it could be provided that committees could have the power to introduce bills deemed imperative under the circumstances.

In this connection it might be interesting to make this observation. Any bill which springs from the brain of a legislator, for which there is no public demand or appeal, has small chance of becoming a law. The starry-eyed dreamer who brews utopian legislation in the sanctity of his ivory tower is liable to be a tragic failure at Sacramento. Laws are born from the well-spring of public demand and approval.

We lawyers were particularly interested in the legislative program of the State Bar. We were very ably represented at Sacramento by our Mr. Claude Minard, who was very successful in presenting and securing passage of legislation affecting the legal profession. Southern California was fortunate in securing a new and much needed Appellate Court and we finally won the fight this year to restore the salaries of our Superior Court Judges in Los Angeles County to their previous amounts.

You often hear the hackneyed and critical observation that there are too many lawyers in the legislature. Of course, we could ask who is better qualified to study and enact laws than lawyers whose life work is the law. But then we would be accused of being prejudiced. The facts, however, show that out of 80 members in the Assembly only 28 are lawyers and out of 40 members in the Senate only 13 are lawyers. The legislature can truly be said to be a representative cross-section of society, consisting of lawyers, teachers, ranchers, insurance brokers, newspaper publishers, engineers, a funeral director, a labor executive, a preacher, a retired naval officer, contractors, railroad men, a public accountant, a druggist and merchants.

This diversity of occupations, professions and interests gives to the legislature a comprehensive viewpoint and understanding of the manifold problems confronting our state. It tends to eliminate in large measure the possibility of one-sided legislation and supplies the leaven for successful legislation for all the people. Partisanship disappears at Sacramento on practically all legislation This is a fortunate circumstance which allows bills to be discussed and voted for or against upon their merits.

I would certainly be remiss in writing these conglomerate legislative impressions if I did not emphasize my high regard and esteem for my brother legislators. It has never been my privilege to work with a group of people who more conscientiously tried to fulfill the duties imposed upon them by the requirements of their office. True, there are legislators who take their work more seriously than others, some who because of their peculiar talents and the particular situation involved make a greater contribution in formulating and enacting legislation. But, all in all, each member plays his part and contributes his share. The result is democracy in action. My first session at Sacramento was not only an invaluable educational experience but it renewed my faith in the workability and permanence of our democratic representative form of government. . . .

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